



## Legislative Council Staff *Nonpartisan Services for Colorado's Legislature*

# Fiscal Note

**Drafting Number:** LLS 22-0185  
**Prime Sponsors:**

**Date:** October 25, 2021  
**Bill Status:** Bill Request  
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**Bill Topic:** **AG WATER RIGHTS DEED AFFIDAVIT NO INVEST SPECULATION**

**Summary of  
Fiscal Impact:**

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> State Revenue     | <input type="checkbox"/> TABOR Refund                |
| <input checked="" type="checkbox"/> State Expenditure | <input checked="" type="checkbox"/> Local Government |
| <input type="checkbox"/> State Transfer               | <input type="checkbox"/> Statutory Public Entity     |

The bill requires that an affidavit be included with any recording of agricultural water rights stating that the purchaser is not engaging in investment water speculation. It will minimally increase state and local government revenue and workload on an ongoing basis.

**Appropriation  
Summary:** No appropriation is necessary.

**Fiscal Note  
Status:** The fiscal note reflects the bill draft requested by the Water Resources Review Committee.

## Summary of Legislation

Whenever a deed or other instrument conveying agricultural water rights is recorded with the county clerk, this bill requires an affidavit that the purchaser is not engaging in investment water speculation. The affiant must state that he or she has actual knowledge of and is competent to testify concerning the affidavit, and include information about the purchaser's reason for purchasing the rights and the intended use of the water.

The bill defines investment water speculation as the purchase of agricultural water rights with the intent to profit from an increase in the water's value in a subsequent transaction. The bill excludes from this definition purchases made by state and local governments, water conservancy districts, or quasi-governmental agencies and nonprofits that purchase agricultural water rights primarily for a public purpose, such as conservation or compact compliance.

The State Engineer in the Division of Water Resources in the Department of Natural Resources (DNR) is authorized to investigate the veracity of an affidavit to determine if the purchaser has engaged in investment water speculation. Investigations may be initiated based on a third-party complaint, or upon the State Engineer's own motion. The State Engineer may inspect documents as part of any investigation, and must make a written determination within 35 days. A written determination that a purchaser did engage in investment water speculation is admissible in court as evidence of perjury.

## **State Revenue**

To the extent the bill increases case filings, state revenue will increase to the Judicial Department. Any increase is expected to be minimal.

## **State Expenditures**

**Department of Natural Resources.** Workload in the DNR is expected to increase by a minimal amount. The Chief Hearings Officer in the Division of Water Resources will be required to participate along with other division staff in a small number of investigations annually, estimated to require up to 40 hours of staff time per investigation. This fiscal note assumes investigations will primarily occur in response to third-party complaints. Should the number of complaints requiring investigation exceed a nominal amount, the department will seek appropriations through the annual budget process.

**Judicial Department.** The bill increases workload for the trial courts when disputes arise challenging the legitimacy of a water purchase and truthfulness of an affidavit. This fiscal note assumes purchasers will comply with the law and not risk the consequences of submitting false information. The number of cases with an accusation of perjury are anticipated to be low and no additional appropriations are required.

## **Local Government**

The bill will likely increase the length of deeds and other instruments of conveyance of agricultural water rights recorded with county clerks. Since many counties have recording fees per document, additional workload and revenue will accrue for some county clerks to record these specific deeds to include the affidavit.

## **Effective Date**

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed, and applies to deeds or other instruments of agricultural water rights recorded on or after that day.

## **State and Local Government Contacts**

Judicial

Law

Natural Resources